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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION,)	
on its own motion,)	
)	
Investigation concerning Illinois Bell)	Docket No. 01-0662
Telephone Company's compliance)	
with Section 271 of the)	
Telecommunications Act of 1996.)	

PEOPLE'S RESPONSE TO STAFF'S MOTION TO DISMISS PHASE IB

In response to Staff's Motion to Dismiss Phase IB of This Proceeding, For Entry of An Order Directing Ameritech to Verify Whether it Will Agree to Implement the 01-0120 Remedy Plan for Section 271 Approval Purposes, and for Administrative Notice of the Remedy Plan Docket, (AStaff Motion to Dismiss Phase IB@), the People of the State of Illinois, by James E. Ryan, Attorney General, agree that Phase IB should be dismissed for the reasons stated in Staff's Motion, and for the additional reason that subsequent to the filing of that Motion, the Commission specifically voted that the remedy plan adopted in ICC Docket 01-0120 would continue indefinitely and be the remedy plan for Section 271 purposes, absent a request to terminate it.

In further response to Staff's Motion, the People maintain that there is no need for Ameritech to Aagree@to accept the ICC Docket 01-0120 remedy plan for Section 271 purposes, as the Commission has already made the determination that the remedy plan does not have a termination date. There should be no need to address the details of the remedy plan in this proceeding other than to determine whether the ICC Docket 01-0120 remedy plan satisfies FCC criteria. See Staff Motion to Dimiss Phase IB at & 24.

In further support of this Response, the People state as follows:

1. Staff correctly and fairly stated the Commission's holding in ICC Docket 01-0120, which established a remedy plan for Ameritech Illinois. The Commission stated: "Unless otherwise directed, by the Commission, the remedy plan adopted pursuant to this order, shall serve as the basis for the aforementioned performance assurance plan referenced by Ameritech for Section 271 approval purposes." Quoted in Staff's Motion at ¶ 7.

2. On October 1, 2002, at a regularly scheduled open meeting, the Commission voted to remove a termination date (of October 8, 2002) from the tariff filed by Ameritech to comply with the ICC Docket 01-0120 Order. ICC Docket 01-0120, Order on Reopening (Oct. 1, 2002). The Commission action effectively rejected Ameritech's position, asserted in this docket as well as in ICC Docket 01-0120, that the remedy plan expired on October 8, 2001. *Id.* at 3 & fn. 1.

3. The existence of a remedy plan, recently adopted after extensive collaborative meetings and litigation, combined with the Commission's statements and actions showing that the plan is intended to be ongoing, demonstrate that the Phase IB proceeding is not necessary and would be a waste of the Commission's and the parties' resources. See ICC Docket 01-0120, Order at 20 ("The Commission does not believe that it is in either its own interest or any of the parties' interest, to relitigate the nuances of the remedy plan in the current Section 271 proceeding.") (quoted in Staff's Motion at ¶ 5.)

4. The need for a remedy plan does not appear to be in dispute. Ameritech witness John Ehr served extensive testimony addressing Ameritech's proposal for a performance remedy plan before the Order in ICC Docket 01-0120 was issued, although such testimony was not offered by Ameritech into the Phase I record. Further, Staff's Motion cites the Federal

Communications Commission's expectation that remedy plans will be in place as part of the Section 271 process to prevent backsliding. Staff Motion at ¶ 1-2. Further, Ameritech has continued to pay fines for service quality lapses and has announced significant job cuts, engendering a heightened concern that service quality may become degraded in the absence of a remedy plan to provide necessary incentives and consequences should service quality fail to meet established standards.

5. Although supporting the Staff Motion to Dismiss Phase IB, the People object to requesting Ameritech to agree to implement the 01-0120 remedy plan for Section 271 purposes.¹ The Commission determines what remedy plan is appropriate for Section 271 purposes irrespective of Ameritech's agreement.² Under the Public Utilities Act, the company is obligated to conform its actions to Commission orders, and the company's agreement is not required nor is it relevant. 220 ILCS 5/5-202. Accordingly, the People maintain that discontinuing Phase IB is appropriate irrespective of Ameritech's agreement³ to accept the remedy plan adopted in ICC Docket 01-0120.

6. The Commission's rejection of both Ameritech's Application for Rehearing (which requested the Commission to clarify that the ICC Docket 01-0120 remedy plan did not preclude relitigation in this docket)⁴ and its tariff filing purportedly terminating the remedy plan on October 8, 2002 is based on common sense and good policy. The parties who will be subject to the remedy plan participated in collaborative meetings for many months and litigated proceedings for 17 months. During that period, Ameritech requested a Commission recommendation under Section 271, so that it could enter the in-region long distance market. A state remedy plan is an essential public interest consideration in Section 271 applications. See

¹ Staff Motion to Dismiss Phase IB at ¶10.

Staff Motion to Dismiss at & 1-2. It is only logical, and consistent with administrative efficiency, the use the remedy plan painstakingly developed over the course of years by the very parties participating in this docket, and currently in place, as the remedy plan for Section 271 purposes. Ameritech should not be allowed to ignore the Commission's resolution of issues barely 3 months ago, and burden the Commission and the parties by relitigating them in this docket.

7. Staff pointed out that the Federal Communications Commission has set certain standards of review for remedy plans. Staff Motion to Dismiss Phase IB at & 24. A review of these standards demonstrates that they can be applied to the ICC Docket 01-0120 remedy plan, to insure that it meets FCC requirements. Reviewing the plan under these standards is not the same as rewriting or replacing the plan, as Phase IB is currently established to do. The Commission should not reconsider or rewrite the remedy plan, but merely review whether the plan it has adopted meets FCC standards. The People agree with Staff that this can be done in Phase II, after the OSS testing is complete.

8. The relationship between anti-backsliding measures and OSS testing justifies combining these issues into Phase II. The OSS testing should reveal the extent to which Ameritech provides consistent, reliable and non-discriminatory wholesale service. The anti-backsliding measures and incentives that the remedy plan is designed to provide should be directly responsive to the findings of the OSS testing, so that services that the Commission believes require special incentives and/or penalties are addressed in the remedy plan. To the extent that documents from ICC Docket 01-0120 are relevant to that review, the People agree that administrative notice should be taken of them.

WHEREFORE, for the foregoing reasons and for the reasons stated in Staff's Motion to Dismiss Phase IB, the People request that the Staff's Motion to Dismiss Phase IB be granted, that Phase IB be terminated, and that whether the remedy plan adopted in ICC Docket 01-0120 complies with FCC requirements be included in the currently scheduled Phase II.

Respectfully submitted,
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NOTICE OF FILING

PLEASE TAKE NOTICE that on this date, October 10, 2002, we filed with the Chief Clerk of the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62794-9280 the enclosed **PEOPLE-S RESPONSE TO STAFF-S MOTION TO DISMISS PHASE IB** via e-docket.

Susan L. Satter
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CERTIFICATE OF SERVICE

I, Susan L. Satter, Assistant Attorney General, hereby certify that I served the above identified documents upon all active parties of record on the attached service list on October 10, 2002, by electronic mail. Hard copies will be provided upon request.

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